

09/449,380 and claims 1-2 of U.S. Patent No. 6,638,136. Claims 1-21 remain pending for prosecution.

CLAIMS 1-8

The Examiner has rejected claim 5 on the grounds that the specification fails to provide proper antecedent basis or otherwise sufficiently describe the limitation that “the second member comprises a second material having a second melting point that is higher than the first melting point.” As hereinafter explained, applicants respectfully submit that claim 5 is fully supported by the specification. Claim 5 depends directly from claim 1. Therefore, applicants will first point out the support or basis for claim 1 in the specification and then address claim 5.

Applicants will also explain the support in the specification for the other claims for the sake of completeness and clarity. For the most part, applicants address each of the issues raised by the Examiner in the order in which they appear in the Office Action.

Claims 1 And 7

The Examiner comments at page 3, Section 5, first paragraph, that the disclosure does not support the limitation of claim 1 that “the second member [is] molded within the distal end of the first member.” As shown, for example, in Figures 17, 18, 26 and 28, and as described at pages 18-19, 26 and 34, a first member (605) has a proximal end (620) comprising a disk (655) to form a first movable joint and a distal end (625) to form a second movable joint. A second member (615) has a proximal end (640) and a distal end (645). The proximal end (640) of the second member (615) is molded within the distal end (625) of the first member (605) as shown in Figures 17 and 26 and described at page 34, paragraph [0124].

Likewise, as to the Examiner's comment about claim 7, the specification fully supports the limitation that the "proximal end of the second member molded within the distal end of the first member comprises an aperture and a portion of the distal end of the first member is molded within the aperture." As described at page 34, paragraphs [0124-0125] and as shown in Fig. 26, the distal end of the first member (605) forms a pivot pin (652) within aperture (650) of the proximal end (640) of the second member (615). The pivot pin (652) is formed in aperture (650) when the first member (605) is molded around the second member (615).

A third member (660) has a proximal end and a distal end. The distal end of the third member (660) is rotatably connected to the proximal end (620) of the first member (605) to form the first movable joint. The proximal end (620) of the first member (605) comprises a disk (655) to form a rotatable joint with the distal end of the third member (660). Thus, in response to the Examiner's comment at page 3, Section 5, paragraph 4, the specification fully supports this element of claim 1. The third member (660) comprises a pair of shells (745, 750).

A fourth member (710) has a proximal end (755) and a distal end (720) that is captured by the proximal end of the third member (660) to form a third movable joint. As to the Examiner's comments at page 3, Section 5, paragraphs 3 and 4, the ball member (730) at the distal end (720) of the fourth member (710) is captured by the cavity (735) formed at the proximal end of the third member (660) when the shells (745, 750) of the third member (660) are joined together to form a pivoting (and rotating) joint between the third and fourth members. See page 26, paragraph [0103] and Figs. 17, 18 and 28.

The Examiner also says that claims 1 and 7 do not match the disclosure or drawings as regards the movable joint formed between the first and second members. As explained above

and as described at page 18, paragraph [0083] to page 19 and page 34, paragraphs [0124-0125], and as shown in Figures 17, 18, 26 and 28, the proximal end (640) of the second member (615) is molded within the distal end (625) of the first member (605) to form a movable joint between the two members. The proximal end (640) of the second member (615) comprises a ring (647) that defines an aperture (650). The distal end (625) of the first member (605) comprises a pivot pin (652) that is molded within and extends through the aperture (650) disposed at the proximal end (640) of the second member (615). The molding method to form this joint between the distal end (625) of the first member (605) and the proximal end (640) of the second member (615) is described at page 26, paragraph [0124] and is shown in Figure 26. Thus, applicants respectfully submit the specification clearly supports and describes both claims 1 and 7 as they relate to the movable joint formed between the distal end of the first member and the proximal end of the second member.

The Examiner also states that claim 1 is confusing as it relates to the movable joint formed between the distal end of the third member and the proximal end of the first member and the movable joint formed between the distal end of the fourth member and the proximal end of the third member. As explained above, the proximal end (620) of the first member comprises a disk (655) that is captured by the distal end of the third member (660), which third member is formed by the pair of shells (745, 750). This is described at page 18, paragraph [0082] and is shown, for example, in Figure 17. Also as previously explained, a movable joint is formed between the distal end (720) of the fourth member (710) and the proximal end of the third member (660). That is, the ball member (730) disposed at the distal end (720) of the fourth

member (710) forms a pivoting (and rotating) joint with the proximal end of the first member (third member (660)).

Accordingly, applicants respectfully request that the Section 112 rejections of claims 1 and 7 be withdrawn.

Claim 5

As to claim 5, as described at page 34, paragraph [0124] and shown in Figures 17 and 26, the first member (605) comprises one material and the second member (615) comprises another material, wherein the melting point of the first member (605) is lower than the melting point of the second member (615). Put another way as recited in claim 5, the melting point of the second member (615) is higher than the melting point of the first member (605). In this way, as described at page 34, paragraph [0124] and as shown in figures 17 and 26, the proximal end of the second member (615) is molded within the distal end of the first member (605). Thus, claim 5 is fully supported by the written description and drawings.

Accordingly, applicants respectfully request that the Section 112 rejection of claim 5 be withdrawn.

Claims 2-4

As to claims 2, 3 and 4, as seen in Fig. 17, for example, the movable joint formed between the first member (605) and the second member (615) is a pivoting joint and both the first member (605) and second member (615) are of one-piece construction.

Claim 6

Regarding claim 6, the proximal end (640) of the second member (615) comprises an aperture (650) and the distal end (625) of the first member (605) comprises a pin (652) to engage

the aperture (650), as described at page 19, paragraph [0084] and page 34, paragraph [0125] and as shown in Figs. 17 and 26.

Claim 8

The movable joint formed between the third member (660) and fourth member (710) pivots (and rotates) as set forth in claim 8. See page 26, paragraph [0103] and Figs. 17, 18 and 28.

CLAIMS 9-19

The Examiner raises many of the same Section 112 issues with respect to claims 12-13 and 16-19 as he raises with respect to claims 1 and 7 (see Office Action at page 3, section 5, paragraph 4). Claims 12-13 and 16-19 all depend, directly or indirectly, from claim 9. Therefore, applicants will first point out the support in the specification for claim 9 and then address each dependent claim noted by the Examiner, as well as remaining claims 20-21.

Claim 9

As shown, for example, in Figures 17, 18, 26 and 28, and as described at pages 18-19, 26 and 34, a first member (660) comprises a pair of shells (745, 750). The distal end of the first member (660) has a receiving cavity (665) to capture the disk (655) disposed at the proximal end (620) of the second member (605). The proximal end (640) of the third member (615) forms a pivoting joint with the distal end (625) of the second member (605). Thus, claim 9 is fully supported by the specification.

Claims 10-11

As to claims 10 and 11, the second member (605) has a disk (655) at its proximal end as shown, for example, in Fig. 17, and the proximal end (640) of the third member (615) is molded

within the distal end (625) of the second member (605), as described at page 18, paragraph [0083] and page 34, paragraph [0125], and as shown in Figs. 17 and 26.

Claim 12-13

As to claims 12-13, the proximal end of the first member (660) captures the distal end (720) of the fourth member (710) when the shells (745, 750) are secured together. The ball member (730) disposed at the distal end (720) of the fourth member (710) forms a pivoting (and rotating) joint with the proximal end of the first member (660). Applicants therefore submit that claims 12-13 are fully supported by the specification and respectfully request that the Section 112 rejection as to these claims be withdrawn.

Claims 14-15

Regarding claims 14 and 15, the distal end (625) of the second member (605) comprises a pin (652) that engages the aperture (650) in the proximal end (640) of the third member (615), as described at page 18, paragraph [0083] and page 34, paragraph [0125], and as shown in Figs 17 and 26.

Claims 16-19

As to claims 16-19, the distal end (645) of the third member (615) has an aperture (835) as described at page 34, paragraph [0125] and as shown in Figures 17, 26 and 27. A pivot pin (830) at the proximal end of the fifth member (610) is molded within the aperture (835) at the distal end (645) of the third member (605) to form a pivot joint between the two member. Thus, claims 16-19 are fully supported by the specification.

CLAIMS 20-21

Claims 20-21 are also fully supported by the specification in that the foot member, (i.e., the recited sixth member) as shown in Figures 17 and 18 is pivotally connected to the distal end of the fifth member (610).

The Words and Phrases Used in the Claims Need Not Match Those Used in the Specification

Whether an example of a particular limb member is described in the written description as a third member and in the claims as a fourth member is of no import for Section 112 purposes. The words “third” and “fourth” are used as a matter of convenience to refer to definite, readily ascertained limb members as illustrated in the figures and described in the written description. The rejected claims are directed to a unique combination of articulations/articulated limb members.

MPEP § 2173.04(e) permits even more leeway in the use of identifying language in the claims:

The mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision.

That is, the claimed subject matter need not be described using the same literal terms as those used in the written description with regard to the illustrated embodiment. MPEP § 2163.02. Where, as in the present case, the written description and the claimed series of articulated limb members are fully illustrated and described in the specification, there is more than ample support to provide antecedent basis for the amended claims.

Moreover, a rejection under the second paragraph of Section 112 based on a comparison of the claims to the specification is not proper. Whether the language used in the claims is consistent with the language of the specification is not an appropriate basis for rejecting claims as failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

The second paragraph of Section 112 pertains *only* to the claims. “Agreement, or lack thereof, between the claims and the specification is properly considered only with respect to the first paragraph of Section 112; it is irrelevant to compliance with the second paragraph of that section.” *In re Ehrreich and Avery*, 200 USPQ 504,508 (C.C.P.A. 1979); MPEP 2172. “If the scope of the subject matter embraced by a claim is clear, and if the applicant has not otherwise indicated that he intends the claim to be of a different scope, then the claim does particularly point out and distinctly claim the subject matter which the applicant regards as his invention.” *In re Borkowski*, 422 F. 2d 904, 909 (C.C.P.A. 1970). “The appropriate inquiry is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity so as to apprise one of ordinary skill in the art of its scope.” MPEP 2173.02.

As described above in detail, the claims are fully supported by the specification and are consistent with the invention described and taught by the written disclosure and drawings. The different limb articulations embraced by each claim are clearly set forth so that one of ordinary skill in the art would be able to understand precisely the scope of each claim in light of the teachings of the specification. A person of ordinary skill in the art would be able to follow the recitation of the series of limb members comprising the claimed limbs, including the manner in

which the limb members are connected to each other, and thus understand the structure of the claimed articulated limbs and the boundaries of each claim.

Applicants respectfully submit that all of the claims are fully supported by the specification and request that the rejections under 35 U.S.C. § 112 be withdrawn.

Terminal Disclaimer

Applicants also submit a terminal disclaimer to obviate the double patenting rejections.

Accordingly, claims 1-21 remain pending and applicants respectfully request that all claims be allowed.

Respectfully submitted,

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